



IDL ADMINISTRATIVE RULES AND NEGOTIATED RULEMAKING

[ARCHIVE DOCUMENT]

June 30, 2009 Negotiated Rulemaking

A few changes were made to the Lake Protection Rules (20.03.04).

Updated tables of the specific changes can be read here:

- [Table of draft changes to 20.03.04](#)
- [Table of draft changes to 20.03.17](#)

Here are the updated draft rules:

- [Lake Protection Rules Draft Changes](#)
- [Submerged Leasing Draft Changes](#) (no changes were made from the previous draft)

Here is a draft procedure change:

- [Similar Size and Quality Issues](#)

These are draft copies of proposed rule changes. For official rules, see this website:

<http://adm.idaho.gov/adminrules/rules/idapa20/20index.htm>

The topics discussed are as follows:

1. Some participants wanted to delete the phrase "and is not self propelled" from the definition of a float home. The intent is to bring vessels, and new types of house boats, under the float home authority if they were connected to upland sewer systems and rarely, if ever, left a marina. Some of these newer structures are commonly advertised as floating cabins, and they indeed look like a floating cabin or trailer home. IDL had contacted the Idaho Department of Parks and Recreation (IDPR) last year in regards to the licensing of these structures as vessels. IDPR stated that if these structures have motors and steering, they will be licensed as vessels. If they are licensed as vessels,

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then IDL will not regulate them as encroachments. When the propulsion and steering systems are either not installed or are removed then they could be considered non navigational encroachments and IDL will pursue their removal from navigable waters. House boats were also briefly discussed, and IDL restated that if anything was licensed as a vessel, then an encroachment permit would not be required. IDL and IDPR have agreed on the resolution of past abuses regarding vessel licensing, so some checks and balances are in place. Some participants still wanted IDL to regulate them as encroachments, and IDL suggested that county regulations be pursued, as is currently underway.

2. The treatment of float homes in Subsection 015.03 was again discussed at length. IDL agreed to create a checklist for privatization applications to make sure they were complete. The remaining discussion is broke out into subtopics below.
 - a. Some general agreement was reached about the meaning of the first sentence in 015.03.a. It specifically refers to moorage. As a result, using deck and fairway square footage to compare the percentage of public vs. private usage is probably not appropriate.
 - b. Several participants would like float homes to be removed from the comparison with boat slips (two public boat slips per private float home moorage in paragraphs f and g). These participants claimed that the current rule language was forcing marinas to privatize float homes, or would prevent the creation of an all float home marina. IDL and others disagreed, and stated that market conditions and marina owners are determining how float home moorage is being treated. IDL needs to provide a tangible benefit to the public trust in exchange for the privatization of float home moorage. Allowing two public boat slips to be used as an offset against a private float home slip provides a tangible public benefit. Requiring a straight comparison between public and private float home moorage would remove some of the flexibility that the business owners may need.
 - c. Some participants claimed that under the current rule two public row boat slips could be used to offset a private float home moorage. While IDL did not agree that such a

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proposal would survive the permitting process, they did agree that some kind of guidance could be helpful for IDL staff reviewing the applications as well as the applicants and the general public. IDL agreed to put this guidance in the procedures manual instead of the rule [\(draft procedure change\)](#). This guidance would require a weighted average of public slip sizes to be used as an offset for a private float home moorage if a non-private float home moorage was not available for use as an offset.

d. Some participants would like to have the comparison between public and private moorage be made based on the exact square footage of the float home and boat slips involved. IDL does not wish to use float home square footage as a comparison against boat slip square footage. Three out of the five marinas with float homes do not charge for float home moorage based on square footage. IDL stated that float homes are not assessed a rent based on square footage under the state submerged lands leases, so they should not be treated on a square footage basis for the encroachment permits.

e. The determination of "similar size and quality" in paragraphs 015.03.f and g was also discussed. Some more clarification on how IDL determines "similar size" was requested. IDL is comfortable with the current rule language that leaves some flexibility in determining what is "similar". Marinas all have different shapes, configurations, and histories, so using a single method for comparing public and private moorage may not be appropriate. IDL did agree that some kind of guidance could be helpful for IDL staff reviewing the applications as well as the applicants and the general public. IDL agreed to put this guidance in the procedures manual instead of the rule [\(draft procedure change\)](#). The applicant would provide a list of public and private boat slip sizes with square footage totals. As stated above, a weighted average of the public boat slip sizes would be used to determine the size of the two public boat slips used to offset a private float home.

3. The requirement for yearly sewer inspections may be burdensome and unnecessary for those systems that have been recently upgraded. IDL contacted some plumbing professionals with float home experience to help flesh out plumbing standards for float homes. These requirements would need to be implemented by 2012 at which time IDL

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will obtain baseline information about all float homes to determine where further improvements are needed. The standards and implementation schedule are now incorporated into the draft rule changes.

4. Some participants requested a separate permitting process for a minor modification, especially for single family and two family docks. IDL does not want to introduce more complexity into the permitting process. IDL predicted that much time would be spent with applicants discussing whether or not a modification was minor. Due to the potential infringement on neighbors and square footage issues, IDL believed the processing time would end up being about the same. The applicants might see a benefit, but IDL did not believe the agency would experience a benefit.
5. Boat lifts were discussed again. The changes from last week were adjusted a bit. The proposed changes would only require submittal of a revised dock drawing if certain conditions were met. All other lifts must go through the normal permitting process due to concerns about infringement, line of navigability, and square footage.
6. More discussion took place over the word "tubular" in the definition of slip covers. Some participants would like the option of using wood supports instead of metal. IDL has two main concerns regarding the use of wood for slip covers. The first concern is a conversion of the covered slip to a boat garage, and possibly to a float home. Neither of these conversions is allowed. This evolution has been a problem in the past. While hard sides can also be put on a tubular frame, it is much easier to attach materials to wood supports. The second concern is aesthetics, a public trust value. While individual owners may appreciate the architectural style of a wood framed slip cover, the general public may not. A wood frame would have more "visual mass" and would look like a structure out over the water. This structure would intrude on the natural beauty of the lake and the forested hills around the lake. If covered slips are all made of tubular materials, they have less visual mass and fade into the background more easily. IDL admitted that regulating aesthetics was not an easy task since they are, by definition, subjective, but IDL believes that the rules should be on the side of caution.

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